

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30461
Docket No. CL-29906
94-3-91-3-288

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Transportation-Communications International
(Union
(
(CSX Transportation, Inc. (former Louisville
(and Nashville Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood
(GL-10588) that:

1. Carrier violated the Agreement when, on Monday, February 27, 1989, it transferred the duties of preparing and transmitting the trailer repair report from clerical employees to CSX Services.
2. Carrier shall pay one (1) day's pay at the appropriate rate for eight (8) hours, starting February 27, 1989, and continuing until the violation is stopped and the work is returned to the clerical employees."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This dispute is concerned with a "position or work" Scope Rule which provides, in pertinent part, as follows:

"RULE 1 - SCOPE RULE

- (a) This agreement shall govern the hours of service and working conditions of employees engaged in the work of the craft or class of Clerical, Office, Station, Tower, Telegraph Service and Storehouse Employees, subject to exceptions noted herein.
- (b) Positions or work covered under this Rule 1 shall not be removed from such coverage except by agreement between the General Chairman and the Director of Labor Relations. It is understood that positions may be abolished if, in the Carrier's opinion, they are not needed, provided that any work remaining to be performed is reassigned to other positions covered by the Scope Rule."

The particular circumstances which led to the instant claim are not really in dispute. It is clear from the record that prior to February 27, 1989, at Carrier's Intermodal Ramp in Nashville, Tennessee, Carrier had a contract with an outside company named TRANSPO for the maintenance and repair of trailers used in Carrier's TOFC service. The mechanics of TRANSPO examined trailers for damage. When damage was discovered, TRANSPO mechanics prepared a handwritten work order indicating the repairs required and the estimated cost of such repairs. The work order was then presented to Carrier's Ramp Manager for review and approval. After the work order was approved by the Ramp Manager, the repairs were made by TRANSPO mechanics and the completed work order was then forwarded to TRANSPO's headquarters in Chicago, Illinois, where a formal invoice was prepared reflecting the work done and the cost thereof. This invoice was then sent via U.S. Mail to the Nashville Ramp Manager who, after reviewing and approving the invoice, gave the invoice to a clerical employee who input the repair information into the Intermodal Repair Computer System. This concluded the Nashville Clerk's participation in the operation.

Beginning February 27, 1989, Carrier terminated its working agreement with TRANSPO and entered into a contract with CSX Services, a subsidiary company which is not part of the negotiated labor agreement here in question, to maintain and repair the TOFC trailers at Nashville. CSX Services employed mechanics who performed the same type of service as had been provided by TRANSPO mechanics. When damage was discovered by CSX mechanics, they prepared a handwritten work order indicating thereon the repairs required and the cost of such repairs. This work order was then presented to the Ramp Manager for review and approval. After the work order was approved by the Ramp Manager, the repairs were made by CSX Services employees. Thereafter, the work order was used by CSX Services employees to make a direct input of the repair work and costs into a CSX Services CRT network which had a direct connection into Carrier's Intermodal Repair Computer System. The step in the procedure relative to the preparation of a printed invoice by the contractor and the subsequent use of that invoice by Carrier's employees to input information into the computer was discontinued.

As a result of this change in the handling of the repair information, the Organization initiated the instant claim on April 25, 1989.

The Organization's position is that inputting invoice information into Carrier's computer system is work which was properly performed by Carrier's clerical employees prior to February 27, 1989, and therefore could not be removed from that group of employees except by agreement between the parties. The Organization argued that the sequence of events and the nature of the work and forms used subsequent to February 27, 1989, was essentially the same as that which existed prior thereto with the exception that subsequent to the claim date, non-railroad employees performed the computer input work which had formerly been performed by Carrier's clerical employees. This, the Organization contends, created a violation of the "position or work" Scope Rule and warranted payment as claimed.

The Carrier, of course, has a different viewpoint. It contends that with the advent of the use of CSX Services there was no printed invoice of repairs and charges prepared as had been done by TRANSPO and that this step in the procedures had been eliminated. Therefore, it contended that there was no transfer of work and the claim as presented lacked merit or rule support. Carrier continued by contending that "CSX Services is simply exchanging data electronically with CSL Intermodal per Article V - ELECTRONIC DATA INTERCHANGE of the April 15, 1986 National Clerical Agreement." The Carrier also argued that the claim was excessive because "the work required at most a few minutes" and that there was no actual loss sustained by any of Carrier's employees inasmuch as no positions were abolished as a result of the change of contract operations.

Article V, Section 2 of the 1986 National Agreement reads as follows:

"Section 2 - Data Interchange

Electronic data may be transmitted, received and exchanged among railroads and between them and their shippers and/or receivers (or their agents), including the use of Railinc or similar data switching services, without any requirement that employees represented by the organization signatory hereto participate in such function. Input and retrieval of data between railroads and their shippers and/or receivers (or their agents) must be related to the shipper's or receiver's business."

The Board considered all arguments of the parties and studied all precedential citations which have been presented. The Board is cognizant of the importance and sanctity of the parties' Scope Rule. We are well aware of the significant differences between a "general" and a "position or work" Scope Rule. The Board accepts the principle that with a "position or work" Scope Rule, the necessity to prove exclusivity of performance on a system-wide basis is not required. The Board also accepts as valid the principle which was enunciated in Third Division Award 13236, to wit:

"The exclusivity doctrine applies when the issue is whether Carrier has the right to assign certain work to different crafts and classes of its employees -- not to outsiders."

However, the Board also recognizes the right of the Carrier to eliminate steps in the receipt, processing and transmission of information including the receipt, processing and transmission of information between it and shippers, receivers and/or agents. Further, the Board accepts as valid the principle that the elimination of a step or steps in procedures does not constitute a transfer of work.

In the instant case, prior to February 27, 1989, the outside contractor submitted an invoice statement to Carrier which outlined the work which had been performed by the contractor and the charges for those repairs. This invoice was the document which was used by the clerical employee to input information into Carrier's computer.

After February 27, 1989, the outside contractor changed its method of transmitting information to the Carrier from the use of a printed invoice to the use of its own CRT device. This action by the contractor effectively eliminated a step in the process of providing data to Carrier's computer. The data is no longer printed on an invoice and thereafter input into the computer, but rather is transmitted directly to the computer via the contractor's CRT. Such a procedure does not constitute a transfer of work and, therefore, is not a violation of the "position or work" Scope Rule. The "work" which had formerly been performed by the clerical employee no longer exists to be performed. Support of this position is found in Third Division Awards 23458 and 25902 among others. Thus, by the change in reporting data employed by the contractor, there was simply an elimination of a step in the processing of trailer repair information. There was no transfer of work to anyone either within or outside of the Agreement.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of September 1994.